

FCC MAIL SECTION

Jul 20 3 37 PM '94  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 94-66

In the Matter of

Amendment of Section 73.202(b), RM-8469  
Table of Allotments,  
FM Broadcast Stations.  
(Tyler, Texas)

**NOTICE OF PROPOSED RULE MAKING  
AND ORDER TO SHOW CAUSE**

Adopted: June 23, 1994;

Released: July 8, 1994

Comment Date: August 31, 1994

Reply Comment Date: September 18, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Gleiser Communications, Inc. ("petitioner"), licensee of Station KDOK-FM, Channel 221A, Tyler, Texas, proposing the substitution of Channel 221C3 for Channel 221A at Tyler and modification of Station KDOK-FM's license to specify operation on the higher powered channel. In order to accomplish the upgrade at Tyler, petitioner also requests the substitution of Channel 256A for Channel 221A at Fairfield, Texas, and the modification of Station KNES-FM's license to specify the change in channel; and the substitution of Channel 277A for Channel 221A at Commerce, Texas, and the modification of Station KEMM-FM's license to reflect the channel change. Petitioner states it will apply for Channel 221C3 at Tyler and will also reimburse the licensees of Station KNES-FM and KEMM-FM for the reasonable expenses associated with the change in channels at Fairfield and Commerce.

2. In support of its proposal, petitioner states adoption of its proposal would permit Station KDOK-FM to increase its service area to 4,787.2 square miles which encompasses 192,911 persons. Petitioner advises that the channel substitutions for Station KNES FM and KEMM-FM will enable both stations to increase power of their respective stations to 6.0 kilowatts, resulting in large gains in areas and populations. In addition, petitioner provided an engineering study demonstrating that the allotment of Channel 221C3 to Tyler will not cause any significant impact on existing or future noncommercial educational services in the area.

3. We believe the public interest would be served by proposing the substitution of Channel 221C3 for Channel 221A at Tyler; the substitution of Channel 256A for Chan-

nel 221A at Fairfield; and the substitution of Channel 277A for Channel 221A at Commerce, since the proposal could provide all the communities with better reception service. Channel 221C3, Channel 256A, and Channel 277A can be allotted to Tyler, Fairfield and Commerce, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 221C3 can be allotted to Tyler with a site restriction of 1.6 kilometers (1.0 miles) west to accommodate petitioner's desired site.<sup>1</sup> As proposed, Channel 256A and Channel 277A can be allotted to Fairfield and Commerce, respectively, at the transmitter sites specified in Station KNES-FM's and Station KEMM-FM's authorizations.<sup>2</sup> Therefore, we will direct an *Order to Show Cause* to the licensees of Station KNES-FM and Station KEMM-FM why their licenses should not be modified to specify operation on Channel 256A and Channel 277A as proposed herein instead of the present Channel 221A.

4. As requested, we shall propose to modify the license of Station KDOK-FM at Tyler, Texas, to specify operation on Channel 221C3. In accordance with Section 1.420(g) of the Commission's Rules we will not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Tyler, Texas.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Tyler, Texas	221A, 226C1	221C3, 226C1
	268C, 281C2	268C, 281C2
Fairfield, Texas	221A	256A
Commerce, Texas	221A	277A

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Freestone Broadcasting Company, Inc., and KEMM Communications, Inc., respective licensees of Station KNES-FM, Fairfield, Texas, and Station KEMM-FM, Commerce, Texas, SHALL SHOW CAUSE why their licenses SHOULD NOT BE MODIFIED to specify operation on Channel 256A and 277A as proposed herein instead of the present Channel 221A.

7. Pursuant to Section 1.87 of the Commission's Rules, Freestone Broadcasting Company, Inc. and KEMM Communications, Inc., may, not later than August 29, 1994, file a written statement showing with particularity why their licenses should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Freestone Broadcasting Company, Inc. and KEMM Communications, Inc. to furnish additional information. If Freestone Broadcasting Company, Inc. and KEMM Communications, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter

<sup>1</sup> The coordinates for Channel 221C3 at Tyler are North Latitude 32-20-42 and West Longitude 95-10-08.

<sup>2</sup> The coordinates for Channel 256A at Fairfield, Texas, are

North Latitude 31-41-52 and West Longitude 96-09-44. The coordinates for Channel 277A at Commerce, Texas, are North Latitude 33-11-40 and 96-01-20.

of modification for hearing. If no written statement is filed by the date referred to above, Freestone Broadcasting Company, Inc. and KEMM Communications, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to:

Freestone Broadcasting Company, Inc.  
P.O. Box 347  
Fairfield, Texas 75840  
(Licensee of Station KNES-FM)

KEMM Communications, Inc.  
900 Jackson  
Dallas, Texas 75202  
(Licensee of Station KEMM-FM)

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **August 31, 1994**, and reply comments on or before **September 18, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

M. Scott Johnson, Esq.  
Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900E  
Washington, D.C. 20005  
(Counsel for petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and

such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.